

To: Tina Laidlaw/MO/R8/USEPA/US@EPA[]
From: "Suplee, Mike"
Sent: Wed 6/6/2012 3:50:08 PM
Subject: Materials to review
[NEW RULE I.docx](#)

Hi Tina;

We are not yet at a point where I am comfortable with you sending our flowchart of last week out to your fellow EPA folks. Still discussing with the NWG...

However, I am moving ahead on drafting rule language that could implement the ideas in the flowchart (attached). Check out in particular bullets 5 to 7. I have incorporated the link to factor 3 there as well. Again, for your eyes only at this time (Benjamin can look on if he wants...)

Mike

NEW RULE I: NUTRIENT STANDARDS VARIANCES

(1) A person may apply to the department for a nutrient standards variance at any time following the board's adoption of base numeric nutrient standards.

(2) An application for an individual variance must provide adequate demonstration that there are no reasonable alternatives that eliminate the need for a variance and that attainment of the base numeric nutrient standards is precluded due to economic impacts, the limits of technology, or both. If the demonstration relies upon economic impacts, the demonstration must be consistent with the guidelines developed by the department and the nutrient work group, as provided in 75-5-313(2), MCA.

(3) The department shall review each application for an individual variance to determine whether a reasonable alternative, such as trading, a permit compliance schedule, a general variance, , reuse, recharge, or land application would eliminate the need for an individual variance. If the department makes a preliminary finding that a reasonable alternative to approving an individual variance is available, the department shall consult with the applicant prior to making a final decision to approve or deny the individual variance.

(4) If, after consultation with the applicant, the department determines that no reasonable alternative to an individual variance exists, the department must determine whether the information provided by the applicant in (2) adequately demonstrates that attaining the base numeric nutrient standards is not feasible. If the department finds that attaining the base numeric nutrient standards is not feasible, the department shall approve an individual variance, which will become effective and incorporated into the applicant's permit only after adoption by the department in a formal rulemaking proceeding.

(5) An application for a general variance must provide information demonstrating that the wastewater treatment facility meets the requirements of 75-5-313(5)(b), MCA or updated concentrations adopted by the department.

(6) A permittee who has already received a general variance is not required to further treat the facility's discharge to an updated (lower) general variance concentration adopted by the department if it can be demonstrated that achieving the lower concentration would not result in a significant environmental improvement and progress towards attaining the base numeric nutrient standard and would cause more environmental harm than remaining at the previous general variance concentration. The demonstration must be consistent with guidelines developed by the department and the nutrient work group.

(a) Permittees not required to treat their facility's discharge to the most current general variance concentration(s), per (6), must commence the collection of water quality data that can be used to determine if a future upgrade to the facility would or would not result in significant environmental improvement and progress towards attaining the base numeric nutrient standard(s). Data collection must be consistent with guidelines developed by the department and the nutrient work group.

(7) An approved TMDL that provides a wastewater treatment facility a zero waste load allocation during the time a base numeric nutrient standard applies, that indicates that the wastewater treatment facility's current level of treatment is sufficient to achieve a base numeric nutrient standard, or that demonstrates that the wastewater treatment facility is an insignificant nutrient load to the receiving waterbody precludes the need for

the permittee to receive or maintain a nutrient standards variance.